



October 8, 2021

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, as amended, Public Employees for Environmental Responsibility (PEER) requests certain information and communications from the U.S. Environmental Protection Agency (EPA) regarding the EPA “working definition” of per- and polyfluoroalkyl substances (PFAS).

### **Background**

In or before June of 2021 the EPA Office of Pesticide Programs (OPP) included “the latest working definition [of PFAS] from our sister office, the Office of Pollution Prevention and Toxics (OPPT)” on its website regarding PFAS in pesticide packaging, and stated the working definition as:

a structure that contains the unit  $R-CF_2-CF(R')(R'')$ , where R, R', and R'' do not equal "H" and the carbon-carbon bond is saturated (note: branching, heteroatoms, and cyclic structures are included).<sup>1</sup>

Furthermore, on June 28<sup>th</sup>, 2021, the EPA published a Federal Register Notice of Proposed Rule entitled *TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances*, which stated the working definition and its origin at OPPT:

For the purposes of this proposed action, the structural definition of PFAS includes per- and polyfluorinated substances that structurally contain the unit  $R-(CF_2)-C(F)(R')R''$ . Both the  $CF_2$  and  $CF$  moieties are saturated carbons and none of the R groups (R, R' or R'') can be hydrogen. It should be noted that this structural definition of PFAS is a working definition which has been used by EPA's Office of Pollution Prevention and Toxics when identifying PFAS on the TSCA Inventory.<sup>2</sup>

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<sup>1</sup> EPA OPP, Per- and Polyfluoroalkyl Substances (PFAS) in Pesticide Packaging, <https://www.epa.gov/pesticides/pfas-packaging> (last visited Sept. 29, 2021).

<sup>2</sup> 86 Fed. Reg. 33926, 33929 (Monday, June 28, 2021) <https://www.federalregister.gov/d/2021-13180/p-56>.

PEER is requesting documents related to the development of the OPPT's working definition for PFAS.

### **Requests**

PEER requests the following records:

1. All records and communications containing, referencing, regarding, or otherwise arising out of the OPPT's development of the "working definition" referenced on the EPA OPP's "Per- and Polyfluoroalkyl Substances (PFAS) in Pesticide Packaging" website: <https://www.epa.gov/pesticides/pfas-packaging>.
2. All records and communications containing, referencing, regarding, or otherwise arising out of the OPPT's development of the "working definition" referenced in EPA's Notice of Proposed Rule dated June 28<sup>th</sup>, 2021.
3. All records and communications from any person, including non-employees and contractors, in EPA's possession concerning the development of a definition of PFAS and any further communication in response thereto.

If the above requests are unclear, result in an abnormally large number of results, or otherwise impracticable please contact the requester to provide clarification or narrow the scope of the request accordingly.

Responsive records should exclude routine or automatically generated emails such as news alerts, roundups, or similar services.

### **Scope of Request**

#### **1. Dates of Records**

This request is limited to records and information generated between June 1, 2018, and June 28, 2021.

#### **2. Custodians**

Custodians of the relevant records include current employees assigned or detailed to the EPA Office of Research and Development, OPPT, and OPP but may include persons in other EPA offices or programs if the initial search indicates that the development of the "working definition" included other parties.

Because PEER cannot know with precision which individual custodians would maintain such records, it has specified the office and subject matter such that the agency has reason to know which places may contain responsive documents.

This request is not limited to documents exchanged between the listed persons and should include communications exchanged between any listed person and any other person that otherwise are responsive to this request.

### **3. Form of Records**

This request includes all records that have ever been within the agency's custody or control, whether they exist in agency "working," investigative, retired, electronic mail, or other files. Physical records should be scanned or otherwise converted into electronic format.

Responsive records should include electronic messages (including email, texts, chats, and instant messaging via Google, iMessage, WhatsApp, Facebook, Slack, Microsoft Teams, Skype, and any similar services) stored on any desktop, laptop, tablet, server, commercial document sharing service (Microsoft Teams or OneDrive and any similar services), or mobile device, as well as handwritten materials if they have not been digitized. PEER requests that a search be conducted of relevant folders in the agency's electronic file systems, including Microsoft Teams or other similar services, in addition to employee emails. Please also provide all email attachments or linked materials if they are in the agency's possession or control.

For electronic records, please provide all records in their native file formats (i.e. not converted to PDF) with all metadata included, and for records such as emails which have files embedded or attached, please provide all attachments in their native formats. For instant messages, plain text is acceptable consistent with guidance issued by the National Archives and Records Administration.

### **4. Withholdings and Exemptions**

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

#### **Fee Waiver Request**

PEER requests that all fees be waived because "disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor" (5 U.S.C. § 552 (a)(4)(A)):

#### **1. The records concern the operations or activities of the Government.**

The FOIA request is, by its terms, limited to identifiable activities of the agency and its development of an agency definition of a class of chemicals.

#### **2. The disclosure of the requested records is likely to contribute to public understanding of these operations or activities.**

If the public sees these materials, it will help enhance their understanding of how the agency develops its understanding and policy response to PFAS. The regulation of PFAS is of great

interest to the general public and environmental advocates, further official information from the agency will help clarify its role and process in understanding PFAS.

**3. The release of these requested records will contribute significantly to public understanding of the governmental activities.**

The nature of the information should enhance public understanding of the agency's development of its PFAS regulations and policy.

PEER intends to disseminate this information on the agency's working definition to the general public through –

- Release to the news media;
- Posting on the PEER web page which draws 5,000-7,000 unique visitors per month; and
- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 journalists.

Through these methods, PEER generates an average of 1.5 mainstream news articles per day. Moreover, media coverage of PFAS underlines the broad public interest in this material.

**4. Disclosure would not serve a commercial interest of the requestor.**

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management, environmental protection, and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c)(3) of the Internal Revenue code.

**Please Request any Necessary Clarification or Narrowed Scope**

If in the process of conducting a search for records responsive to this request it appears that a large quantity of irrelevant material is being included or further relevant material may not be captured by the specific terms of the request, or any other concerns related to the timeliness or completeness of the response arise, please contact the undersigned at [hkingston@peer.org](mailto:hkingston@peer.org) and Kyla Bennett at [kbennett@peer.org](mailto:kbennett@peer.org).

We look forward to receiving the agency's final response within 20 working days.

Thank You,

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